Re Estate of Chua Tong Boon

HIGH COURT (KOTA BAHRU) — ESTATE PETITION NO 31–6 OF 1999
SURIYADI J
1 FEBRUARY 2000

Civil Procedure *— Administration of estates — Letter of administration — Contested application — Whether application should be summarily dismissed — Rules of the High Court 1980 O 71 r 38*

An application for letters of administration was made to administer the estate of the deceased which included three plots of land. One of the deceased's children objected to the application and following the provisions of O 71 r 37 RHC filed a caveat and entered appearance, and with that the matter was deemed to be contested. The matter was then referred to the learned judge. The caveator claimed that as the three plots of land had been transferred during the deceased lifetime, there was no more immoveable property left in the deceased's estate to be administered. In response to this, the applicants alleged that the transfers effected were pursuant to fraudulent acts committed by the caveator.

Held, dismissing the application:

In considering whether to dispose of the matter in dispute in a summary manner under O 71 r 38, the test and principle to be applied were the same as those applicable in summary judgment cases, whereby, if there were real or substantial questions to be resolved, the application should be dismissed as the matter fell under the purview of O 72, which dealt with contentions matters. On the facts, triable issues arose as the registered owners of the plots of land were persons other than the deceased. Further, the allegation of fraud by the applicants had not been proven beyond reasonable doubt (see pp 740G–H, 741D).

[Bahasa Malaysia summary

Satu permohonan untuk surat-surat pentadbiran telah dibuat untuk mentadbir harta pusaka si mati yang terdiri daripada tiga keping tanah. Salah seorang daripada anak si mati telah membantah terhadap permohonan tersebut dan mengikut peruntukan-peruntukan A 71 k 37 Kaedah-Kaedah Mahkamah Tinggi 1980 ('KMT') telah memfailkan kaveat dan memasukkan kehadiran, dan dengan itu perkara tersebut dianggap telah dipertikaikan. Perkara tersebut kemudiannya telah dirujuk kepada hakim yang bijaksana. Pengkaveat mendakwa bahawa memandangkan tiga keping tanah tersebut telah dipindahmilik semasa hayat si mati, tiada lagi hartanah tidal boleh alih yang tinggal dalam harta pusaka si mati untuk ditadbirkan. Sebagai jawapan kepada perkara ini, left in the deceased's estate

A to be administered. pemohon-pemohon mendakwa bahawa pemindahmilikan tersebut telah dilaksanakan melalui tindakan-tindakan penipuan yang dilakukan oleh pengkaveat.

Diputuskan, menolak permohonan tersebut:

B Di dalam mempertimbangakan sama ada untuk menyelesaikan perkara yang dipertikaikan dengan cara terus di bawah A 71 k 38, ujian dan prinsip yang terpakai adalah sama dengan yang terpakai dalam kes-kes penghakiman terus, di mana, jika terdapat persoalan-persoalan yang sebenar atau penting yang perlu diselesaikan, permohonan tersebut hendaklah ditolak kerana perkara tersebut jatuh
C di bawah skop A 72, yang berkaitan perkara-perkara kontroversi. Berdasarkan fakta-fakta, persoalan-persoalan yang perlu dibicarakan timbul kerana pemilik-pemilik berdaftar plot-plot tanah tersebut adalah orang selain si mati. Tambahan pula, dakwaan penipuan oleh pemohon-pemohon tidak dibuktikan melampaui keraguan
D munasanah (lihat ms 740G–H, 741D).]

Notes

For cases on administration of estate, see 2(2) *Mallal's Digest* (4th Ed, 1998 Reissue) para 145.

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Cases referred to

Chia Foon Sian & Anor v Lam Chew Fah & Anor [1955] MLJ 203 (refd)

Fatimah Bee alias Batcha v Mohideen Batcha, Attorney of Shaik Dawood [1946] MLJ 10 (refd)
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Mohideen Batcha v Fatimah Bee @ Batcha Ammal [1946] MLJ 112 (refd)

Legislation referred to

National Land Code 1965
G Probate and Administration Act 1959
Rules of the High Court 1980 O 71 rr 14, 37, 38, O 72

Hj Norr Hamid bin Mohd Noor (*Hamid Badrul Azmi Tan*) for the applicant.

Teoh Poh Oon (*Teo & Chew*) for the respondent.
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Suriyadi J: An application had been submitted by Chua Choo Moure and Chua Choon Tian to extract a letter of administration, to enable them to administer their late father's estate, ie the late Chua Tong Boon ('the deceased'). The application was pursuant to the Probate and Administration Act 1959. It was made as the deceased had died without
I endowing the necessary instruction or power to any of his issues pertaining to his estate. That letter of administration was supposed to encompass three lots of immoveable property viz:

(i) G 15320 Lot No 983, Mukim Dewan, Jajahan Kota Bharu, Kelantan; A

(ii) G 24639, Lot 2282, Mukim Dewan, Jajahan Kota Bharu, Kelantan; and

(iii) G 1682, Lot 2281, Mukim Dewan, Jajahan Kota Bharu, Kelantan.

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All the seven children of the deceased, with the exception of one, did not object to the application. Objections were only taken up by one Chua Khim Sek.

With there being an objection to the application, the provisions of the Rules of the High Court 1980 ('the RHC') therefore became highly relevant. In this case, due to the approach undertaken by the applicants, rightly or wrongly, much of the discussion during the hearing was centered on O 71 of the RHC. Even a cursory glance will show that this provision is pertinent only for non-contentious probate proceedings. It is the requirement of the law that, in the event there is any objection to the application, that objection must be taken up by the filing of a caveat. This, the objector/caveator did. The purpose of this caveat, as promulgated under O 71 r 37 of the RHC, is to ensure that no grant is made without having an objector informed first. The next significant stage is when the interested party, in this case the two applicants of the letter of administration, on being aware of the caveat must then take out a 'warning', a kind of stern notice to the caveator to enter appearance within eight days. If that is not done the caveat becomes ineffectual. If appearance is entered then a summons is issued by them, and the caveator is to show cause why the caveat ought not be cleared. Under sub-r 14 of r 37 of the same order, once appearance is entered then the matter is deemed to be contested. In this case all these mentioned steps were adhered to. The senior assistant registrar thereafter accordingly referred the matter to me, pursuant to O 71 r 38 of the RHC, as the matter was now deemed contested (see *Fatimah Bee v Mohideen Batcha* [1946] MLJ 10; on appeal see [1946] MLJ 112). It was pursuant to that referral that I dealt with the matter.

C D E F

The relevant legal point for me to consider was whether the matter for consideration could be disposed of summarily. Comprehending the language of O 71 r 38 of the RHC, I was satisfied that the same test and principle applied in summary judgments were equally applicable here. If I were to conclude that there were real or substantial questions to be resolved, be it from the point of view of facts or law, then it was encumbent upon me to dismiss the application. In other words, the matter really should come within the purview of O 72 of the RHC, which deals with contentious matters. In the current case I was satisfied that there were real or substantial questions yet to be resolved. I was not certain that the applicant was entitled to the order as prayed.

G H

In a rather peculiar way, the doubts in me were contributed also in a large way by the replies of the applicants in response to the objections of the caveator. That came about as, prior to the response of the applicants, Chua Khim Sek in his objections had stated that:

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A (i) Lot 983, Mukim Dewan, Jajahan Kota Bharu was registered under his name on 6 October 1981, whilst the deceased had died on 21 May 1997. In gist that relevant immoveable property was transferred to him by the deceased when still alive. As he now had an indefeasible title this lot therefore could not qualify as part of the deceased's estate;

B (ii) Lots 2281 and 2282, both of Mukim Dewan, Jajahan Kota Bharu, Kelantan had been transferred to Yap Ami @ Yap Bee Choo, Chua Lin Nee, Chua Ling Hooi, Chua Lin Chui and Chua Tying Tying on 8 May 1996 and 5 March 1996. These transfers were also done during the lifetime of the deceased. As they now had indefeasible titles surely these lots also failed to qualify as part of the deceased's estate; and

C (iii) there was no more immoveable property left in the estate of the deceased to be administered (see *Chia Foon Sian & Anor v Lam Chew Fah & Anor* [1955] MLJ 203).

Even without the responses of the applicants, I was already satisfied that a triable case certainly existed here. Pursuant to the National Land Code
D 1965, the registered owners of Lots 983, 2281 and 2282, the very lots supposed to be resolved by the letter of administration, already had indefeasible titles. So, how could I grant that document with all its consequential powers to the applicants supposedly on behalf of the deceased's estate, when these properties were already owned by others? To make matters worse the applicants alleged that the transfers effected were
E pursuant to fraudulent acts committed by the caveator. I voiced my dissatisfaction to the applicants, in particular the manner in which the case was being conducted, with particular reference to the dearth of particulars of fraud before me. I also ventilated to them that the burden of proof in such legal assertions was that of beyond reasonable doubt. In this case, the
F applicants not only have not proven their case beyond the required level, but have not even scratched the surface of their arguments.

Based on the above grounds, I therefore had no compunction in dismissing the application with costs.

Application dismissed.

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Reported by Andrew Christopher Simon

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